

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2354

Heard at Montreal, Wednesday, 14 April 1993

concerning

QUEBEC NORTH SHORE & LABRADOR RAILWAY

and

UNITED TRANSPORTATION UNION

DISPUTE:

Pierre Lessard claims he retains his seniority in Bargaining Unit 1843(A) and (M).

JOINT STATEMENT OF ISSUE:

The Union claims that Mr. Lessard retains his seniority in Bargaining Unit 1843 (A) and (M) even though he no longer occupies an official position and that the Company is in violation of Preamble 4 and of articles 21.04 and 28.02 of the collective agreement.

The Company rejects the grievance and maintains that Mr. Lessard must conform with article 21.04 of the collective agreement if he wishes to maintain his seniority in Bargaining Unit 1843 (A) and (M).

FOR THE UNION:

FOR THE COMPANY:

(SGD.) B. ARSENAULT
GENERAL CHAIRMAN

(SGD.) A. BELLIVEAU
DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Company:

R. Monette	- Counsel, Montreal
A. Belliveau	- Director, Human Resources, Sept-Iles
R. L. Plourde	- Superintendent, Transportation and Traffic, Sept-Iles

And on behalf of the Union:

R. Cleary	- Counsel, Montreal
B. Arsenaault	- General Chairman, Sept-Iles

AWARD OF THE ARBITRATOR

The Arbitrator cannot accept the position of the Company. I accept that there is nothing in the evidence which supports in the least the regrettable claim of the Union to the effect that Mr. R. Normand removed Mr. Lessard's name from the seniority list out of ill feeling. On the contrary, this is a matter of an interpretation of the collective agreement made in good faith and which has a basis in logic, even though the Arbitrator finds that the interpretation is incorrect.

Article 21.04 reads as follows:

21.04 Employees now filling or promoted to official positions with the Railway and employees elected as representatives of the employees, will retain and continue to accumulate seniority, provided seniority rights are asserted within thirty (30) days after release from such employment.

The evidence establishes that Mr. Lessard was promoted to the position of dispatcher in 1974. At that time the position was not unionized. However, in 1989, the positions of dispatchers were included in the accreditation accorded to another union, whose first collective agreement was finalized on 13 June 1990. The Company claims that the seniority rights of Mr. Lessard then ceased to be protected by article 21.04 in that he no longer occupied an "official position" within the meaning of article 21.04.

In light of the evolution of article 21.04, and of the similar provisions in other collective agreements in the railway industry, that position is understandable. However, the wording of article 21.04 is not precise concerning the definition of an official position. Even though one accepts that in its origins that article envisioned employees who left the bargaining unit in order to take a non-unionized position, there is nothing in the terms of that article which deals with the possible consequences if a position said to be "official" comes under union accreditation, especially when nothing else changes in the functions of the position.

The jurisprudence is clear: a board of arbitration must pay close scrutiny before coming to the conclusion that the application of an article in a collective agreement has the effect of removing the seniority rights acquired by an employee or a group of employees. That basic principle was well stated in the award of Justice Reville in **Tung-Sol of Canada Ltd.** (1964) 15 L.A.C. 161 where he stated:

« Seniority is one of the most important and far-reaching benefits which the trade union movement has been able to secure for its members by virtue of the collective bargaining process. An employee's seniority under the terms of a collective agreement give rise to such important rights as relief from lay-off, right to recall to employment, vacations and vacation pay, and pension rights, to name only a few. It follows, therefore, that an employee's seniority should only be affected by very clear language in the collective agreement concerned and that arbitrators should construe the collective agreement with the utmost strictness wherever it is contended that an employee's seniority has been forfeited, truncated or abridged under the relevant sections of the collective agreement. »

Can an arbitrator reasonably conclude, given the very limited terms of article 21.04, that the parties agreed that an employee who occupied an official position would lose his seniority if that position became unionized, without any other change in the functions attached to that position? I think not. In my view, a conclusion with such drastic consequences for the affected employees would require clear and unequivocal language. In the absence of such language, I must conclude that the parties had agreed that an employee in the circumstances of Mr. Lessard would not lose his seniority.

For the foregoing reasons the grievance must be allowed.

April 16, 1993

(Sgd.) MICHEL G. PICHER
ARBITRATOR